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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

KIANA JONES,

Petitioner,

vs.

STARZ ENTERTAINMENT, LLC,

Respondent.

) Case No. 5:24-cv-00206

) **PETITION TO COMPEL**
) **ARBITRATION**

1 Petitioner files this Petition for an Order compelling Respondent Starz
2 Entertainment, LLC (“Starz”), to arbitration under 9 U.S.C. § 4, and alleges as
3 follows:

4 **NATURE OF THE PETITION**

5 1. Petitioner is an individual who streamed video content on the Starz
6 platform and is pursuing federal data privacy claims against Starz pursuant to a
7 mandatory arbitration clause in the Starz Terms of Use.

8 2. Starz disclosed Petitioner’s identity and the videos she watched on the
9 Starz platform to third-party advertising and analytics companies, such as Meta and
10 Google, without Petitioner’s consent. Through this misconduct, Starz violated the
11 federal Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710, et seq., and
12 California Civil Code § 1799.3, which were enacted specifically for the purpose of
13 protecting consumers’ privacy interests in the videos they watched.

14 3. Petitioner agreed to the Starz Terms of Use by signing up for a Starz
15 account. Jones Decl. ¶ 3. Petitioner, therefore, agreed to the mandatory arbitration
16 clause (“JAMS Arbitration Agreement”) in the Starz Terms of Use. *See* Huber
17 Decl., Ex. A (Starz Terms of Use (Revised December 12, 2019)) (“Starz Terms”).

18 4. The Starz Terms are governed by California law, and the JAMS
19 Arbitration Agreement designates JAMS as the arbitration forum under the JAMS
20 *Comprehensive Arbitration Rules & Procedures*. Starz Terms at 13.

1 5. The Arbitration Agreement also states that Petitioner “may bring claims
2 against [Starz] only in your . . . individual capacity, and not as a plaintiff or class
3 member in any purported class or representative proceeding.” Starz Terms at 13.

4 6. In January 2023, Petitioner began the dispute-resolution process by
5 filing an individual arbitration demand with JAMS against Starz, as directed by the
6 JAMS Arbitration Agreement. Starz Terms at 13; *see* Huber Decl., Ex. B (Petitioner
7 Jones’ arbitration demand).

8 7. Thereafter, Petitioner “endeavor[ed] first to attempt to resolve the
9 controversy or claim through mediation administered by JAMS before commencing
10 any arbitration,” as provided in the JAMS Arbitration Agreement. Starz Terms at
11 13.

12 8. Petitioner first requested that JAMS commence the dispute-resolution
13 process for her dispute with Starz by appointing a mediator for her individual
14 dispute.¹ Petitioner also requested that JAMS allocate any fees associated with that
15 mediation to Starz, with Petitioner being charged a cap of \$250 for the overall
16 mediation and arbitration administered by JAMS. The JAMS *Consumer Arbitration*

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18 ¹ In response, JAMS identified a set of eighteen qualified mediators and
19 transmitted the individual fee schedules for these mediators to the parties. *See*
20 Huber Decl., Ex. C (fee schedules). The bulk of the mediators offer their services
21 at a Daily Rate, which includes up to 8 hours of session time—but some of the
mediators additionally offer their services at a Half Day Rate, which includes up to
4 hours of session time—and four of the mediators offer their services at an Hourly
Rate. The median Daily Rate for the mediators is \$12,750; the median of the Half
Day Rates is \$6,250; and the median Hourly Rate is \$900. Each of the fee
schedules cites the *Consumer Arbitration Minimum Standards*, making clear that
the consumer has a \$250 cap on arbitration-related fees.

1 *Minimum Standards* states: “With respect to the cost of the arbitration, when a
2 consumer initiates arbitration against the company, the only fee required to be paid
3 by the consumer is \$250, which is approximately equivalent to current Court filing
4 fees. All other costs must be borne by the company, including any remaining JAMS
5 Case Management Fee and all professional fees for the arbitrator’s services.”²

6 9. Starz objected, arguing that Petitioner must pay half of the mediation
7 fees associated with her individual mediation. Daily mediation fees for mediations
8 administered by JAMS typically start around \$10,000. *See supra* note 1. Starz’s
9 position was therefore that each Petitioner needed to pay thousands of dollars in
10 mediation fees as a condition precedent to arbitration.

11 10. On June 14, 2023, Petitioner notified JAMS that the parties had reached
12 an impasse regarding payment of mediation fees and requested that JAMS
13 commence her individual arbitration to allow an arbitrator to resolve the threshold
14 dispute for Petitioner, in accordance with the delegation clause in the Starz Terms.
15 In particular, Rule 11(b) of the JAMS *Comprehensive Rules* states: “Jurisdictional
16 and arbitrability disputes, including disputes over the formation, existence, validity,
17 interpretation or scope of the agreement under which Arbitration is sought, and who
18 are proper Parties to the Arbitration, shall be submitted to and ruled on by the
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20 ² See Huber Decl., Ex. D (*Consumer Arbitration Minimum Standards*, JAMS (July
21 15, 2009), (available at: <https://www.jamsadr.com/consumer-minimum-standards/>)
 (“*Minimum Standards*”)).

1 Arbitrator.” Huber Decl., Ex. E (JAMS *Comprehensive Arbitration Rules &*
2 *Procedures* (“*Comprehensive Rules*”).

3 11. JAMS commenced arbitration proceedings as to roughly 7,300 pending
4 arbitration demands, including Petitioner’s.

5 12. Starz then argued that JAMS should consolidate Petitioner’s individual
6 arbitration—as well as those of more than 7,000 others—into a single consolidated
7 arbitration under JAMS Comprehensive Rule 6(e). Huber Decl., Ex. F (Letter brief
8 from Starz to K. Loew dated July 17, 2023).

9 13. Petitioner opposed such consolidation, explaining that the Starz Terms
10 provide that the parties will arbitrate their disputes individually, and that California
11 law guarantees each arbitration claimant the opportunity to disqualify a proposed
12 arbitrator regardless of whether another claimant chooses to proceed with that
13 arbitrator. Huber Decl., Ex. G (Letter brief from Keller Postman to K. Loew dated
14 July 17, 2023).

15 14. JAMS ordered consolidation as requested by Starz, despite Petitioner’s
16 objections.

17 15. On November 15, 2023, JAMS appointed the Honorable Gail Andler
18 and served the parties with Judge Andler’s disclosures, as required under California
19 law. *See* Cal. Civ. Proc. §§ 1281.9, 1281.91(b)(1).
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1 16. On November 30, 2023, some of the claimants in the consolidated
2 arbitration served notices of disqualification of Judge Andler pursuant to California
3 Code of Civil Procedure § 1281.91(b)(1).

4 17. Petitioner, along with 68 other claimants, wished to proceed to
5 arbitration with Judge Andler and did not serve a notice of disqualification.

6 18. Starz did not serve a notice of disqualification of Judge Andler.

7 19. Nevertheless, Starz requested that JAMS either: (1) reject the notices
8 of disqualification submitted by other claimants in the consolidated arbitration; or
9 (2) deem Judge Andler disqualified from the entire consolidated arbitration,
10 including from the individual arbitrations of Petitioner and the other claimants who
11 wished to proceed to arbitration with Judge Andler. Huber Decl., Ex. H (Letter brief
12 from Starz to S. Nevins dated Dec. 8, 2023).

13 20. On January 8, 2024, JAMS disqualified Judge Andler from presiding
14 over any of the 7,282 individual arbitrations, including Petitioner's individual
15 arbitration, despite the fact that no party to Petitioner's individual arbitration had
16 served a notice of disqualification of Judge Andler.

17 21. On January 10, 2024, Petitioner wrote to Starz to request that Starz
18 stipulate to the individual arbitrations it had agreed to. Huber Decl., Ex. I (Letter
19 from Keller Postman to Starz dated Jan. 10, 2024).

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1 34. Starz has reneged on the JAMS Arbitration Agreement by requesting
2 that JAMS administer the parties' agreement in a manner that is contrary to the
3 JAMS Arbitration Agreement and California law.

4 35. First, with respect to fees, while the JAMS Arbitration Agreement is
5 silent as to how the parties will pay for the Starz-mandated pre-arbitration mediation
6 session, the JAMS *Minimum Standards* governs in all events because JAMS is
7 administering the JAMS Arbitration Agreement.

8 36. The *Minimum Standards* provide: "With respect to the cost of the
9 arbitration, when a consumer initiates arbitration against the company, the only fee
10 required to be paid by the consumer is \$250, which is approximately equivalent to
11 current Court filing fees. All other costs must be borne by the company, including
12 any remaining JAMS Case Management Fee and all professional fees for the
13 arbitrator's services." Huber Decl., Ex. D. The *Minimum Standards* are mandatory
14 under JAMS rules. *Id.* ("JAMS will administer arbitrations . . . *only if* the contract
15 arbitration clause and specified applicable rules comply with the following minimum
16 standards of fairness." (emphasis added)).

17 37. Starz argued that the \$250 fee cap in the *Minimum Standards* applies
18 only to arbitrations, not mediations that must be conducted before arbitrations.
19 Huber Decl., Ex. K (Email from Starz to JAMS dated June 1, 2023). JAMS—not
20 an arbitrator—preliminarily adopted Starz's position. Huber Decl., Ex. L (JAMS
21 Letter to the Parties dated June 7, 2023). Unlike the decision of an arbitrator, JAMS

1 is entitled to no deference regarding its interpretation of the JAMS Arbitration
2 Agreement or its own rules. *See, e.g., Ciccio v. SmileDirectClub, LLC*, 2 F.4th 577,
3 587 (6th Cir. 2021) (declining to “simply defer[] to the AAA administrator’s
4 interpretation of their own rules”).

5 38. Whether Petitioner can be required to pay half the mediation fees to
6 potentially reach arbitration is ultimately a threshold question for an arbitrator. But
7 Starz has stonewalled Petitioner’s effort to proceed to arbitration of that issue with
8 a mutually agreed-upon arbitrator.

9 39. As set forth above, the JAMS Arbitration Agreement requires that Starz
10 pay all of the mediation fees in a mediation it requires as a pre-condition to
11 arbitration, because the JAMS Arbitration Agreement designates JAMS as the
12 arbitral forum, and the JAMS *Minimum Standards* cap consumer arbitration fees to
13 \$250.

14 40. Starz breached the JAMS Arbitration Agreement by refusing to pay all
15 of the mediation fees in Petitioner’s individual mediation.

16 41. A different allocation of mediation fees, where mediation is a condition
17 precedent to arbitration, would be unconscionable. California courts recognize that
18 “a requirement that a consumer front any . . . filing fees or other arbitration costs . .
19 . has the potential to deter the consumer from using the [arbitration] process.”
20 *Sanchez v. Valencia Holding Co.*, 353 P.3d 741, 755 (Cal. 2015). In such cases, it
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1 is appropriate to use the “unconscionability doctrine . . . to protect nonindigent
2 consumers against fees that unreasonably limit access to arbitration.” *Id.*

3 42. Starz’s argument that Petitioner must pay thousands of dollars in
4 mediation fees as a prerequisite to arbitrating her claim, if it succeeds, would render
5 the JAMS Arbitration Agreement unconscionable. This significant fee would
6 unreasonably limit Petitioner’s access to arbitration.

7 43. Thus, even if the JAMS Arbitration Agreement is properly interpreted
8 to require an even split of mediation fees—and it does not—the portion of the JAMS
9 Arbitration Agreement requiring that outcome is unconscionable, unenforceable,
10 and severed from the rest of the JAMS Arbitration Agreement.

11 44. Second, Starz breached the JAMS Arbitration Agreement by refusing
12 to arbitrate Petitioner’s claim (including the dispute over the allocation of mediation
13 fees) on an individual basis before the JAMS-appointed arbitrator that neither
14 Petitioner nor Starz sought to disqualify.

15 45. Starz argued that disqualification notices submitted by *other* claimants
16 should be binding on Petitioner. By Starz’s logic, a disqualification notice by a
17 single claimant out of 7,282 should disqualify the arbitrator from the other 7,281
18 matters. This plainly contradicts the JAMS Arbitration Agreement, which affords
19 Petitioner the right to pursue her claim in her “individual capacity,” not subject to
20 the whims of other individuals who may have similar claims against Starz.

1 46. While Judge Andler was disqualified from Petitioner’s arbitration by
2 JAMS at Starz’s urging, it is important to note again that it was JAMS, and not an
3 arbitrator, that made that decision—and that unlike a decision of an arbitrator, JAMS
4 is not entitled to deference regarding its interpretation of the JAMS Arbitration
5 Agreement or California law.

6 47. Petitioner has the absolute right to disqualify a proposed arbitrator
7 without cause. *Roussos v. Roussos*, 275 Cal. Rptr. 3d 196, 203 (2021). California
8 law mandates that every “proposed neutral arbitrator” must submit a disclosure
9 statement, and an arbitrator “shall be disqualified on the basis of the disclosure
10 statement after *any party* entitled to receive the disclosure serves a notice of
11 disqualification within 15 calendar days.” Cal. Civ. Proc. § 1281.91(b)(1) (emphasis
12 added); *see also* Cal. Civ. Proc. § 1281.9. If a party does not serve a notice of
13 disqualification, “[t]he right of a party to disqualify a proposed neutral arbitrator . .
14 . shall be waived[.]” *Id.* § 1281.91(c).

15 48. JAMS rules cannot override Petitioner’s absolute and unwaivable right
16 to choose her arbitrator. *See* JAMS, *Comprehensive Rules*, R. 4 (“If any of these
17 Rules, or modification of these Rules agreed to by the Parties, is determined to be in
18 conflict with a provision of applicable law, the provision of law will govern over the
19 Rule in conflict, and no other Rule will be affected.”); *Roussos*, 275 Cal. Rptr. 3d at
20 203.

1 49. Petitioner’s individual arbitration against Starz is comprised of only
2 two parties: Petitioner and Starz. Under California law, in each individual
3 arbitration, only a “party”—Petitioner or Starz—may serve a notice of
4 disqualification. Notices of disqualification submitted by nonparties have no
5 bearing on Petitioner’s individual arbitration with Starz.

6 50. Consolidation of Petitioner’s individual arbitration together with other
7 claimants’ arbitrations does not change the identity of the parties in Petitioner’s
8 individual arbitration. Instead, Petitioner’s arbitration is and remains a separate and
9 independent action. *Cf. Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 (2015)
10 (“Cases consolidated . . . ordinarily retain their separate identities.”); *In re Korean*
11 *Air Lines Co.*, 642 F.3d 685, 700 (9th Cir. 2011) (“Within the context of MDL
12 proceedings, individual cases that are consolidated . . . remain fundamentally
13 separate actions[.]”). Only a party—Petitioner, or an individual claimant, or Starz—
14 in each independent action is entitled to disqualify an arbitrator in each respective
15 action.

16 51. Allowing the nonparty disqualifying claimants to strike Judge Andler
17 from Petitioner’s individual arbitration would be unconscionable and in violation of
18 California law. This would prevent any claimant from using the contractual
19 arbitration process in the JAMS Arbitration Agreement, unless all consolidated
20 claimants waive their absolute statutory right to disqualify an arbitrator.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court enter an Order:

(1) requiring Starz to arbitrate Petitioner's claims through an individual arbitration proceeding in JAMS pursuant to the JAMS Arbitration Agreement;

(2) declaring that, to the extent the JAMS Arbitration Agreement requires Petitioner to pay mediation fees in excess of \$250, that aspect of the Agreement is unconscionable, unenforceable, and severed; and

(3) declaring that, to the extent the JAMS Arbitration Agreement requires Petitioner to be subjected to the arbitrator-selection choices made by other individuals, that aspect of the Agreement is unconscionable, unenforceable, and severed.

1 Dated: January 31, 2024

Respectfully Submitted,

2 /s/ Warren D. Postman

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